



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 635**

## **IN THE MATTER OF EDWIN KILEY**

### **DISPOSITION AGREEMENT**

This Disposition Agreement is entered into between the State Ethics Commission and Edwin Kiley pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

In August 2000, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Kiley. The Commission has concluded its inquiry and, on June 20, 2001, found reasonable cause to believe that Kiley violated G.L. c. 268A, §§19 and 23(b)(3).

The Commission and Kiley now agree to the following findings of fact and conclusions of law:

#### **Findings of Fact**

1. Kiley served on the Burlington Zoning Board of Appeals ("ZBA") from November 26, 1991 until he resigned in June 1999. Kiley was vice-chairman of the ZBA at all times here relevant.
2. On January 20, 1999, a developer, Bedford Builders, Inc., filed a petition with the ZBA for three variances to build a \$300,000 to \$400,000 single family home on a lot on McSweeney Way in Burlington. The lot was located approximately 150 feet north of where McSweeney Way intersects with Bedford Street, a busy main road.
3. At the same time, Kiley owned property that abutted the Bedford Builders' property on the southerly side. Kiley's lot was located on the northeastern corner of the intersection of McSweeney Way and Bedford Street.
4. Kiley has had an ongoing dispute with neighbor Terry McSweeney regarding whether Kiley could use McSweeney Way as a right of way. Kiley had used McSweeney Way as a second means of access to his property (on which he had built a house) for a number of years. McSweeney, however, built a home on the west side of McSweeney Way and constructed a cul-de-sac without a curb cut at the end of McSweeney Way. This prevented Kiley from using McSweeney Way to access his house. Kiley was told by the planning board that he had to obtain a curb cut in order to gain access to his house from McSweeney Way. Kiley still had access to his house from the main road, Bedford Street.

5. At an April 20, 1999 ZBA meeting, a motion was made to continue the hearing on the Bedford Builders' frontage variance application. The vote passed with Kiley voting in favor.
6. At the May 18, 1999 ZBA public hearing, the ZBA resumed its consideration of the Bedford Builders' frontage variance application, and after a two-hour discussion, denied the request by a 3-2 vote. Kiley did not vote on the matter.
7. Kiley sat at the ZBA table during the entire two-hour discussion. Approximately 20 minutes into the Board's discussion before the public was invited to participate, Kiley whispered an expletive to a board member who had voiced opposition to the variance. Approximately 25 minutes into the discussion, the Chairman asked Kiley for his opinion regarding the variance. Kiley strongly voiced his belief that McSweeney Way be turned back into a street so that he could access his house from it. He further stated, "I think the whole thing [the petition] is going down the tubes. I don't think it's right for a lousy 67-foot frontage we can't grant-you can't grant. That's wrong." Kiley repeatedly interrupted his fellow board members and argued with two board members regarding their position on the amount of frontage the petitioner should have.
8. The Chairman then opened the meeting to the public, at which time McSweeney spoke. Kiley proceeded to interrupt McSweeney several times with such comments as, "Why are you stopping the house back there, Terry, why?" and "I think you're very selfish." McSweeney and Kiley had a heated discussion about Kiley's ability to obtain a curb cut onto McSweeney Way.
9. Later in the meeting, the chairman again addressed Kiley and told him he was trying to understand his concerns. Kiley responded, "I'd like to see the [Bedford Builders'] land developed. It needs to be developed. It's a mess back there...I'd like to see a little value on my house someday when I sell it because that's going to look so much better."

#### Conclusions of Law

10. As a ZBA member, Kiley was at all times here relevant a municipal employee as that term is defined in G.L. c. 268A, §1.
11. Section 19 of G.L. c. 268A prohibits a municipal employee from participating as such in any particular matter in which he has a financial interest.
12. The ZBA's decision as to whether to grant the frontage variance was a particular matter.
13. Kiley had a financial interest in that particular matter given that his property value would be affected by the construction of a \$300,000-\$400,000 home immediately next door to his property. Moreover, it appears that Kiley had a financial interest in the variance being granted because in effect, it would recognize McSweeney Way as a public way such that Kiley would be able to seek a curb cut to maintain his other, safer access to his property, and make the property more valuable.
14. Kiley participated in the particular matter as a ZBA member by voting to continue the April 20, 1999 public hearing and by, on May 18, 1999, sitting at the ZBA table during the entire two hour discussion regarding the frontage variance and arguing the variance should be granted before and after the meeting was opened for public comment.
15. When Kiley so participated, he knew that he had a financial interest in the particular matter because he believed, and in fact expressed the view, that his property value would increase

with the construction of a \$300,000-\$400,000 home on the property he abuts. Kiley also had a financial interest in the construction of the house because it would require McSweeney Way to be recognized as a public way and therefore would provide Kiley with a second, safer means of access to his house.

16. Therefore, Kiley participated as a ZBA member in a particular matter in which he had a financial interest. In so doing, Kiley violated §19.

17. In his defense Kiley asserts that he participated in the May 18, 1999 meeting primarily at the urging of the Chairman. (The Chairman, 25 minutes into the meeting, said, "Ed owns a piece of property close to it. I know he's not voting on it but I just wanna hear from Ed why he thinks that this is going to be in the best interest.") In addition, Kiley asserts that when he did speak, he spoke as a private citizen, not as a ZBA member, although he was mistaken not to step down from the table to make his status clear.

The Commission, however, has concluded that the weight of the evidence indicates that Kiley was acting as a ZBA member because: (1) Kiley sat at the ZBA table during the entire two hour discussion rather than stepping down; (2) Kiley spoke about the variance while at the table before being asked to do so by the chairman; (3) even when he spoke at the invitation of the chairman, Kiley spoke prior to the meeting being opened for public comment; in other words at a time when only board members were supposed to speak; and (4) when Kiley later spoke during the public comment session, he neither did nor said anything to indicate that he was speaking as an abutter.

When a board member speaks "at the table" during the course of a formal board meeting, he is acting as a board member unless the evidence indicates otherwise. In this case, it did not. Therefore, Kiley's defense is rejected. On the other hand, it is somewhat mitigating that a significant portion of Kiley's involvement was at the chair's request.

18. The fact that Kiley did not participate in the vote regarding the variance is not mitigating. Input at the discussion stage can be as important, if not more important, than the vote itself.

19. As a result of Kiley's participation at the May 18, 1999 ZBA meeting, Kiley's appointing authority, the town administrator, asked for and received Kiley's immediate resignation from his ZBA position.

20. Kiley fully cooperated with the Commission's investigation of this matter.

#### Resolution

In view of the foregoing violations of G.L. c. 268A by Kiley, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Kiley:

(1) that Kiley pay to the Commission the sum of \$1,000 dollars as a civil penalty for violating G.L. c. 268A, §19; and

(2) that Kiley waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: August 14, 2001**